

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD BRADEN AND POLLY
BRADEN

vs.

SAFECO INSURANCE COMPANY OF
INDIANA and SCOTT DAVID
NARRELL

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Civil Action No. 4:16-cv-1421
(JURY)

NOTICE OF REMOVAL

Defendants Safeco Insurance Company of Indiana and Scott David Narrell timely file this Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1332(a), and 28 U.S.C. §1446(b), removing this action from the 234th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division and in support thereof show as follows:

A. Introduction

1. Plaintiffs commenced this lawsuit against Defendants in the 234th Judicial District Court of Harris County, Texas on, or about, April 6, 2016. A true and correct copy of the Original Petition along with documents reflecting service are attached hereto as Exhibit “1.” Plaintiffs served the Original Petition on Defendant Safeco Insurance Company of Indiana through its registered agent on April 29, 2016.

2. Defendant Scott David Narrell consents to this removal.

3. Defendants are filing this Notice of Removal within 30 days of its first receipt of Plaintiffs’ Original Amended Petition as required by 28 U.S.C. § 1446(b).

4. Plaintiffs seek to recover damages in this lawsuit based on allegations of breach of contract, breach of the duty of good faith and fair dealing and violations of the Texas Insurance Code and DTPA resulting from the alleged conduct of Defendants. Plaintiffs' claims against Defendants arise under a homeowner's policy of insurance issued by Defendant Safeco on Plaintiffs' residential property located in Harris County, Texas, which is alleged to have been damaged when a sewer line on the premises was damaged by a wind/hail storm occurring on or about April 19, 2014.

B. Jurisdiction & Removal

5. This Court has jurisdiction in the case pursuant to 28 U.S.C. §1332, in that there is complete diversity of citizenship between the parties. Accordingly, statutory authority for the removal of this matter is conferred by 28 U.S.C. §§ 1441 and 1446.

6. Plaintiffs are citizens of the State of Texas. Safeco Insurance Company of Indiana is a corporation organized under the laws of the State of Indiana, with its principal place of business in Boston, Massachusetts. Scott David Narrell is a resident of Missouri.

7. Plaintiffs' Petition states they are seeking monetary relief between \$100,000.00 and \$200,000.00. Therefore, the amount in controversy exceeds \$75,000.00.

8. Plaintiffs' Petition seeks damages for breach of contract, bad faith, violations of the Texas Insurance Code, violations of the Texas DTPA and breach of the duty of good faith and fair dealing. The petition requests actual damages, attorneys' fees and statutory interest.

9. The amount in controversy, per *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) and *St. Paul Reinsurance Co., Ltd. V. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998), includes the following elements of damages:

- Plaintiff's actual damages (contract) for his losses under the insurance policy

- Damages for violations of the Texas Insurance Code and DTPA(statutory extra-contractual)
- Mental anguish
- Statutory Attorneys' fees

10. When the applicable damages for determining the amount in controversy as spelled out in *St. Paul Reinsurance* and *Manguno* are compared with the Plaintiffs' Original Petition it becomes clear that the amount in controversy in this case is above \$75,000.

11. Clearly, as this case progresses Plaintiffs' claims for fees as well as interest will rise. Plaintiffs have sought no specific damages for this. *St. Paul Reinsurance* and *Manguno* require all of these damage elements to be considered when determining the amount in controversy. This includes consideration of the policy limits. In this case, the policy limit for the dwelling is \$286,000.00 and the limit for Other Structures is \$7,000.00 (See Exhibit "2"). When all these elements are considered, the amount in controversy exceeds \$75,000.00.

13. Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this district and division.

14. Contemporaneous with the filing of this Notice of Removal, Defendant is filing a Notice of Filing Notice of Removal with the Clerk of Court for the 234th Judicial District Court of Harris County, Texas pursuant to 28 U.S.C. § 1446(d).

15. Attached hereto are all documents required by LR 81, USDC/SDTX Local Rules and 28 U.S.C. § 1446(a).

16. Defendants demanded a jury in the state court action. Defendants also request a trial by jury pursuant to Rule 81(c)(3)(A), Federal Rules of Civil Procedure and LR 38.1, USDC/SDTX Local Rules.

17. All fees required by law in connection with this Notice have been tendered and paid by Defendant.

WHEREFORE, Safeco Insurance Company of Indiana and Scott David Narrell hereby remove the above-captioned matter now pending in the 234th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

SHEEHY, WARE & PAPPAS, P.C.

By: /s/ J. Mark Kressenberg

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**ATTORNEYS FOR THE DEFENDANTS
SAFECO INSURANCE COMPANY OF
INDIANA AND SCOTT DAVID NARRELL**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing instrument has been forwarded via e-filing in accordance with the Federal Rules of Civil Procedure on this the 20th day of May, 2016, to the following counsel of record:

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/s/ J. Mark Kressenberg
J. Mark Kressenberg

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